



GUIDELINES FOR THE CREATION OF NEW COMMERCIAL LEASES FOR CARAVAN PARKS ON CROWN LAND



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1 INTRODUCTION

These Guidelines have been developed by the Crown Land Division of the Land and Property Management Authority of New South Wales to explain some of the issues and processes that are integral to the negotiation of new commercial leases for tourist facilities and in particular, caravan parks, on Crown land.

Land which is owned and managed by the State Government comprises approximately half of all land in New South Wales. Some of this land is allocated to public uses such as national parks, state forests, schools, hospitals, sporting facilities, camping and recreation areas, as well as lands which are managed and protected for their environmental importance. This leaves other significant portions of government land that can be used in a number of ways, including leasing for commercial, industrial or agricultural purposes, through to land development and sale.

The Land and Property Management Authority (the Authority) is responsible for the sustainable and commercial management of Crown land with a total area of approximately 37.1 million hectares (this includes the 3 nautical mile zone and most of the Western Division of New South Wales). In this context the Authority is responsible for the management of some 72,600 licences and permits state wide, along with 14,800 leases. Leases for tourist facilities are a small but important component of this portfolio.

The key objectives for this document are;

- to provide material in plain English which applies to leases and licenses and private treaty negotiations with lessees of existing caravan parks and camping grounds; and
- to give existing and prospective lessees the ability to bring forward Business Case documentation that is directly relevant to the Authority's decision making process.

The processes that apply to the negotiation of new leases are based on the Authority's current approved Policies¹ which reflect the statutory requirements of the *Crown Lands Act 1989*.

¹ *Crown Lands Caravan Park Policy*, Department of Lands, April 1990 and the *Crown Lands Policy for Tourist and Associated Facilities on Crown Land*, NSW Department of Lands, June 2007.

These guidelines should be read in conjunction with the *Crown Lands Policy for Tourist and Associated Facilities on Crown Land* (June 2007) which also addresses other statutory and policy requirements of the government with respect to commercial dealings. The Policy provides for:

- Transparency and consistency in the application of the Authority's Policies;
- Certainty for both the Authority and lessees;
- A market rent to the Crown for the commercial use of its assets;
- On-going management and improvement of the Crown's assets;
- Establishment of consistency in relation to the way in which Trustees including Councils deal with the leasing of Crown land; and
- An on-going business environment where lessees of Crown land can operate profitably and invest in new and improved tourist facilities.

The formulation of these Guidelines has included consultation with Authority staff who are experienced in this particular area of Crown land management, the Caravan and Camping Industry Association (CCIA) and other relevant stakeholders such as professionals in the fields of business planning, accounting, finance and valuation.

2 CONTEXT

2.1 Caravan Parks and the *Crown Lands Act 1989*

Caravan parks on Crown land in New South Wales provide more than 30,000 dwelling sites and campsites primarily for tourist use. Out of a total of around 300 parks on Crown land there are approximately 150 caravan parks in the coastal regions of the State. Two thirds of the caravan parks on the coast are managed by Reserve Trusts created pursuant to Part 5 of the *Crown Lands Act 1989* and in most cases the appointed Reserve Trust manager is a local Council. The remaining parks in the coastal regions are leased and there are a few instances where a Reserve Trust Manager is the lessor.

Due to their often exceptional locations caravan parks on Crown land represent a significant source of highly desirable holiday accommodation. In many local government areas a small number of caravan parks on Crown land supply a majority of the sites available for tourist use. Against this background it is important for the Land and Property Management Authority as the responsible land management agency to have clear and objective grounds upon which to base decision making processes that effect the continued operation of caravan parks on leased Crown land. This will assist in establishing a consistent approach to management of a valuable asset of the state of New South Wales.

The New South Wales legislature provides the Minister for Lands with discretion in dealing with Crown land. Section 34 of the *Crown Lands Act 1989* provides that subject to the preparation of a land assessment, the placement of an advertisement and an overall limit of the term of a lease to 100 years, the Minister:

- (1) may, in such manner and subject to such terms and conditions as the Minister determines:*
 - (a) sell, lease, exchange or otherwise dispose of or deal with Crown land, or*
 - (b) grant easements or rights-of-way over, or licences or permits in respect of, Crown land,*
- on behalf of the Crown.*

The Minister's decisions must address Section 11 of the *Crown Lands Act 1989* which defines the principles of Crown land management in the following manner;

- a. that environmental protection principles be observed in relation to the management and administration of Crown land,*
- b. that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,*

- c. *that public use and enjoyment of appropriate Crown land be encouraged,*
- d. *that, where appropriate, multiple use of Crown land be encouraged,*
- e. *that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and*
- f. *that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.*

2.2 Variations in Tenure and Land Status

A view has been expressed that the Crown should implement a “one size fits all” set of parameters capable of giving certainty in relation to the terms and conditions and rents that will apply when any lease of Crown land is renewed. Analysis demonstrates that this is an unrealistic expectation due to the diverse range of situations that are encountered in the leasing of Crown land.

The nature of the Crown estate and the way in which the use of Crown land and the development of caravan parks has emerged over time has created circumstances where no two tenures are ever identical. The variations that are encountered include the following;

- Concurrent leases over more than one lot or a combination of leases and permissive occupancies or licences;
- A combination of leases that commence and terminate at different times;
- Situations where key infrastructure such as the park entrance, reception and management facilities are located on adjoining freehold land;
- Inclusion of road reserves within the leased area;
- The lessor is a local Council or other Trust appointed by the Minister for Lands;
- Multiple landlords - the Minister for Lands plus a Council as the Trustee of an adjoining reserve or another Minister of the Crown, eg a national park;
- Requirements to provide and maintain public access through the leased premises;
- Legal access is through a Reserve and not via a public road;
- The nature and value of improvements at the end of a lease;
- Requirements for the operation of the Park to comply with the provisions of a Plan of Management under the *Crown Lands Act 1989*;
- Conditions which include development and/or management responsibilities in relation to adjoining Crown land; and
- A requirement to assess a claim in relation to native title.

2.3 Geographic Location and Character of Leased Caravan Parks

A key feature of caravan park leases is that there is invariably other adjoining Crown land, a context which gives rise to many of the situations described in 2.2 above. This will often have an impact on the Authority's consideration of whether a new lease providing for a continuation of the existing use is appropriate and whether any future lease will be for the same area and have the same boundaries as the existing tenure.

In each case the Land and Property Management Authority is required by statute to consider the tenure in a context extending beyond the lease boundaries as well as the specific business aspirations of the lessee. In some cases lease boundaries may be required to contract in recognition of higher land management priorities. In other cases it may not be appropriate for the existing use to continue and in some instances there will be opportunities to either add land or responsibilities to better address the objects and principles of Crown land management.

2.4 Land and Property Management Authority' Involvement in the Operation and Development of Caravan Parks

Many of the key considerations when new leases are negotiated are determined by the impact of existing and emerging planning policy which is outlined in Appendix 1.

A factor that has emerged over the last 5 years is that the former Department of Lands (now the Land and Property Management Authority) has taken a greater active interest in the management, operation, improvement and development of caravan parks. As a consequence the Authority now has direct access to a range of relevant financial data on operational costs and revenue and profit outcomes across a spectrum of parks. This is information that can be referenced in the assessment of Business Cases for new leases.

2.5 Responsive Communication Policy

In most business relationships "time is of the essence". The Land and Property Management Authority is encouraging lessees and Councils to be entrepreneurial and innovative in their approach to the management, improvement and development of caravan parks. In these circumstances the Authority recognises it is essential there are established lines of communication between the parties and a capacity to provide a timely response to requests and proposals that are relevant to the ongoing viability of a commercial opportunity.

As the manager of a very substantial property portfolio the Authority has a statutory responsibility to take a proactive management role with a view to continually enhancing the sustainability of the portfolio. An application for "consent to transfer" or "assignment" of a lease will often be a suitable time to engage with an incoming lessee

to demonstrate that the Authority is not a “silent partner” in the business relationship. The Minister for Lands may also review the conditions of a lease and has the authority to make or agree to variations.

In further recognition of the need to develop consistency in the negotiation of new leases for caravan parks throughout the State the Authority has established a central business unit. While the Authority’s regional offices will continue to have responsibility for the carriage of individual cases the business unit will be responsible for oversight of the administration and progress of negotiations. This will ensure a consistent approach is achieved that is in line with the Authority’s strategic policy position.

3 THE NEGOTIATION PROCESS

3.1 Practice Over the Past Twenty Years

An analysis of negotiations in relation to the renewal of existing Crown leases over the period since the *Crown Lands Act 1989* came into effect shows that the process has always involved a series of similar steps. In different cases the process has been played out over periods from as short as 12 months through to anything up to ten or more years.

The Land and Property Management Authority has now moved to regularise the negotiation process subject to some reasonable expectations in terms of timing for each party, the lessee and the lessor. This in itself will lead to consistency in other key areas.

3.2 The Negotiation Process

Private treaty lease negotiations if approved and appropriate will involve seven essential steps which will include all of the above, and more, but in the context of a defined transparent process where all parties know “what happens next” and when. This process is intended to relate only to existing tenures where there is not a substantial change in the existing land use.

In most situations the process will be initiated by an approach to the Land and Property Management Authority from a lessee. However, in circumstances where the Authority is committed to a proactive involvement in the management of its commercial property portfolio there will be instances where the Authority takes the first step.

1. a) Initial Contact.

In most instances a lessee will make some form of communication with the Authority to investigate the process for obtaining a new lease. Where this occurs it creates an opportunity to arrange a joint site inspection and ensure the lessee is aware of relevant Policies and these Guidelines for Private Treaty Lease Negotiations.

On occasions it may be appropriate for the Authority to advise a lessee at this early stage that there is no point in proceeding further. In such instances reasons will be specified, for example, the remaining term of the existing tenure is such that the Authority considers the creation of a new lease is not justifiable, land management requirements have changed significantly, the land has been re-zoned with caravan park no longer a permissible use, the land is required for another public purpose or continuation of the existing use is environmentally unsustainable.

b) Registration of a Request to Enter Private Treaty Negotiation for the Grant of a New Lease.

The registration stage aims to provide the information that is essential to the Authority's assessment of the issues that precede a decision and advice in relation to 2. below. A registration form is lodged providing current details in relation to the lessee, the land and the existing improvements. The submission of the registration form establishes a clearly defined starting point for both parties.

The form is to be accompanied by a letter or brief report (up to 4 or 5 pages) which outlines the lessee's reasons for seeking a new lease, the achievements and experience of the lessee related to the management of Crown land and the essential components of the lessee's proposal for the future management, continuing use, improvement and/or development of the leased premises. The documentation may include a simple sketch plan to illustrate any proposed future improvements.

Registration will involve a non-refundable deposit of \$250 and the Authority will maintain a register of applications received.

2. Advice of Agreement to Proceed to a Private Treaty Negotiation or Advice that the Lessee's Request has been Declined - allow up to 12 weeks from the date of registration.

At this point the Authority will assess whether the applicant may be considered a "good and complying tenant" and whether a private treaty negotiation would be "in the public interest" and satisfy the government's requirements with respect to "probity".

In the case of a refusal the advice will include reasons. In the case of Agreement to Proceed the advice will include the General Manager's Requirements (GM's Requirements) for the preparation of a Business Case.

The GM's Requirements will outline any matters to be addressed that are specific to the particular application. For example, the Authority may require a reduction in the number of holiday vans, revegetation of part of the land or involvement in the management of adjoining land.

The aim is to have the lessee and the Authority talking about and addressing the core issues from the outset. The GM's requirements will be assigned a "sunset date" which will indicate that a Business Case should be submitted prior to that date. If this does not occur then the lessee will be required to seek confirmation from the Authority that the GM's Requirements have not altered.

The currency of the GM's requirements will usually be 12 months although there may be reasons in specific cases to specify a shorter or longer period.

The information supplied to the lessee at this point will include a standard lease template. Particular clauses may not be relevant to every situation or in direct crown lease negotiations, and there will generally be additional site specific provisions and clauses.

At this point the lessee will also be made aware that the existing lease will be terminated prior to the issue of any new lease. When this occurs Section 174 of the *Crown Lands Act 1989* takes effect which provides that when a lease is terminated the existing improvements become "*the property of the Crown and no compensation is payable for those improvements*". Any agreed recent substantial improvement that has not been amortised may be considered by the Authority in the overall context of the new lease negotiation.

3. Submission by the Applicant of a Business Case to the Authority in support of the Grant of a New Lease - within 12 months of agreement to a private treaty negotiation and issue of the GM's requirements.

A Business Case that can be effectively assessed by the Land and Property Management Authority needs to include the following elements;

- a) **A description of the existing development and details of the statutory consents and approvals that authorise the use.** This section of the Case will include details such as the number and classification of sites, the number of holiday vans, the numbers and types of accommodation, relevant AAA Tourism ratings, a description of existing fixed improvements, an accurate plan of the land and the existing site layout and location of facilities, a copy of the current Section 68 approval and the associated Community Map, a profit and loss statement for the last 3 to 5 financial years, and some photographs of the park. There should also be a simple site analysis to identify constraints and opportunities the lessee intends to address in their proposal.

- b) **A proposal for the future management and if appropriate, improvement of the leased premises.** This will describe any changes and initiatives being brought forward by the lessee. It will also include material to specifically address the GM's requirements. Where relevant this section will describe any proposed capital works and identify any consents and approvals required to enable the implementation of the program.

If applicable, and in most circumstances, programs will relate to the first 5 to 10 years of the new lease with a commitment to a review at the conclusion of the implementation phase. The information submitted must describe what the leased premises will “look like” in the future and show how the proposal responds to the parameters outlined in a) above and the requirements of the *Crown Lands Act 1989* and other relevant statutory controls.

- c) **A financial analysis of the proposal.** The key objective is to demonstrate the commercial requirement for a particular lease term related to implementation of any improvement or management initiatives and amortisation of any associated investment. Specific attention should be given to the value and ongoing use of the Crown’s improvements. This will include details with respect to projected revenue, operational costs and profit for the term of the lease. There should also be an analysis of the benefits that will accrue to the Crown and the community from the continuing use of the land.

Guidelines in relation to the preparation of a Business Case can be obtained from the NSW Premier’s Department website at;

http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0002/1010/Business_Case_Guidelines.pdf

It is expected there will be discussion and liaison between the Authority and the lessee during the preparation of the Business Case to ensure the proposal is;

- appropriate to the character and value of the leased premises;
- consistent with the long term objectives for management of the leased premises and any adjoining Crown land;
- achievable within the parameters and constraints of the regulatory environment;
- mutually beneficial to the Crown, the community and the lessee; and
- reflective of the value of the Crown’s assets.

Applicants should be aware of the Land Assessment requirements of Part 3 of the *Crown Lands Act 1989* and the related provisions of Part 4 Sale, lease etc of Crown land. Section 35, Assessment of Land states;

(1) The powers of the Minister under this Part may not be exercised in respect of Crown land unless the Minister is satisfied that the land has been assessed under Part 3.

(2) Subsection (1) does not apply if:

(a) the Minister is satisfied that it is in the public interest to exercise the powers without assessing the land under Part 3 and the Minister, in exercising the powers, has had due regard to the principles of Crown land management, or

- (b) the powers are to be exercised in respect of the grant of:*
- (i) an enclosure permit, or*
 - (ii) a licence which does not authorise the erection of a structure other than fencing or the removal of material.*

If an early lease renewal is requested and a Land Assessment is required the cost will be met by the lessee.

4. Advice to the Lessee of the Authority's Offer of a New Lease - allow 16 weeks from the submission of the Business Case.

If an offer of a new lease is made it will be based on a detailed assessment of the Business Case, any Land Assessment and relevant planning and policy parameters. The offer will include details in relation to;

- a) the term of lease which will usually be 25 years;
- b) any requirements in relation to capital expenditure;
- c) details of any special conditions or development deed of agreement that will apply; and
- d) the proposed annual rent.

NB: The above timeframe may be longer especially in situations where a Land Assessment is required or another matter such as a native title claim must be resolved. In such instances the applicant will be advised. In most cases there will be requirements for inter-agency referrals which can impact on timeframes.

5. Acceptance of the Offer by the Lessee - offer to be valid for 4 weeks.

It will be open for the lessee to accept all aspects of the Authority's offer or seek further negotiation in relation to particular matters. The objective for any further negotiation at this point will be to resolve the issues on the basis of discussion between the parties.

The Authority has determined that the usual term that will be offered in respect of a new lease for a caravan park will be 25 years. This does not preclude the possibility of exceptional cases where a longer term may be appropriate provided the Business Case clearly demonstrates the circumstances that justify a longer term.

Lessees will be required to respond to an offer of a new lease within a specified period, usually 4 weeks. There will be situations where a longer period is required to assess the business implications of the offer - the time available to the lessee will be specified by the Authority.

6. Advertisement Pursuant to Section 34 of the *Crown Lands Act 1989*.

The Minister for Lands is required to advertise the intention to lease land in a newspaper circulating in the locality in which the land is situated at least 14 days before the lease is executed. The advertisement will be placed when agreement has been reached in relation to all aspects of the lease term, conditions and rent. The usual timeframe for these matters to be concluded is 16 weeks.

7. Execution of the Lease by the Parties, Registration and Gazettal.

In normal circumstances the lease documents should be executed within 30 days of the advertising requirements being completed.

If the entire possible time allocation is used at each step of the process the time from registration to execution of a new lease could be up to 2 years with the longest period potentially being the time taken for the lessee to prepare their Business Case. It would be possible for the process to be completed in around 12 months in more straightforward cases. Similarly there will be circumstances and complexities that result in a longer process in some instances.

With minor adaptation the above process will be applied to caravan parks where the lessor is a Reserve Trust.

The key components of the above process are illustrated in the flow chart in **Figure 1**.

3.3 Potential Outcomes Where a New Lease is not Appropriate

Reasonable business decisions may lead the Authority to truncate the process. For example, where a business is unprofitable or marginal the lessee may not wish to seek a new lease. In such circumstance it may be desirable to refuse any application for consent to transfer and for the Authority to offer the land for Expressions of Interest before the end of the lease. Similarly, a case could arise where land within the current lease (whole or part) is required for a separate or new use. This could lead to the Authority engaging in discussion with the current lessee but the process and subject of any negotiations would be somewhat different.

3.4 Fees and Charges

There are a range of expenses that may be incurred by the applicant including;

- A non-refundable registration deposit of \$250;
- Application fee of \$750 (including the registration deposit);
- Actual cost of the preparation of a Land Assessment where applicable;
- Professional fees for the preparation of a valuation by a registered valuer to determine the initial rent and any premium that may be appropriate;
- Advertising costs in relation to the Notice of Intention to Lease; and
- Land and Property Information fees for registration of the new lease.

As far as possible the applicant will be advised of these and any other costs at an early stage in the process. Costs in relation to valuation and Land Assessment will vary depending on the location and area of the land and other site specific issues.

Obviously costs that may be incurred with respect to the engagement of consultants or other professionals to prepare the Business Case, and development and improvement plans, are entirely a matter for the applicant.

3.5 Rent Determination

The *Crown Lands Policy for Tourist and Associated Facilities on Crown Land* (June 2007) makes it clear that “securing a market return from the commercial use of Crown land and the best outcome for the State” and further that “all rentals will be market based”. The Authority relies on the advice of professional registered valuers and is committed to the implementation of a fair and transparent valuation process in each and every case. Lessees will have access to the valuation report and the opportunity to assess and verify the efficacy of the proposed rent and the matters that have been considered in its determination.

The rent will be determined based on the market value of the land and improvements (owned by the Crown), and the current market value rate of return percentage.

The market value of the land and improvements is to reflect the intended use of the land as a caravan park, and any other use that is permitted in the proposed lease (that will be specified in a lease schedule).

In determining the rate of return % value, evidence will be sought of comparable current market values and rates of return % achieved elsewhere to support the respective valuation assessment and advice. It will also be based on an expectation of best management practices.

An important issue in the determination of the rent will be the value of the “Crown’s improvements”. Section 174 of the Crown Lands Act 1979 provides;

174 Ownership of improvements on forfeiture etc

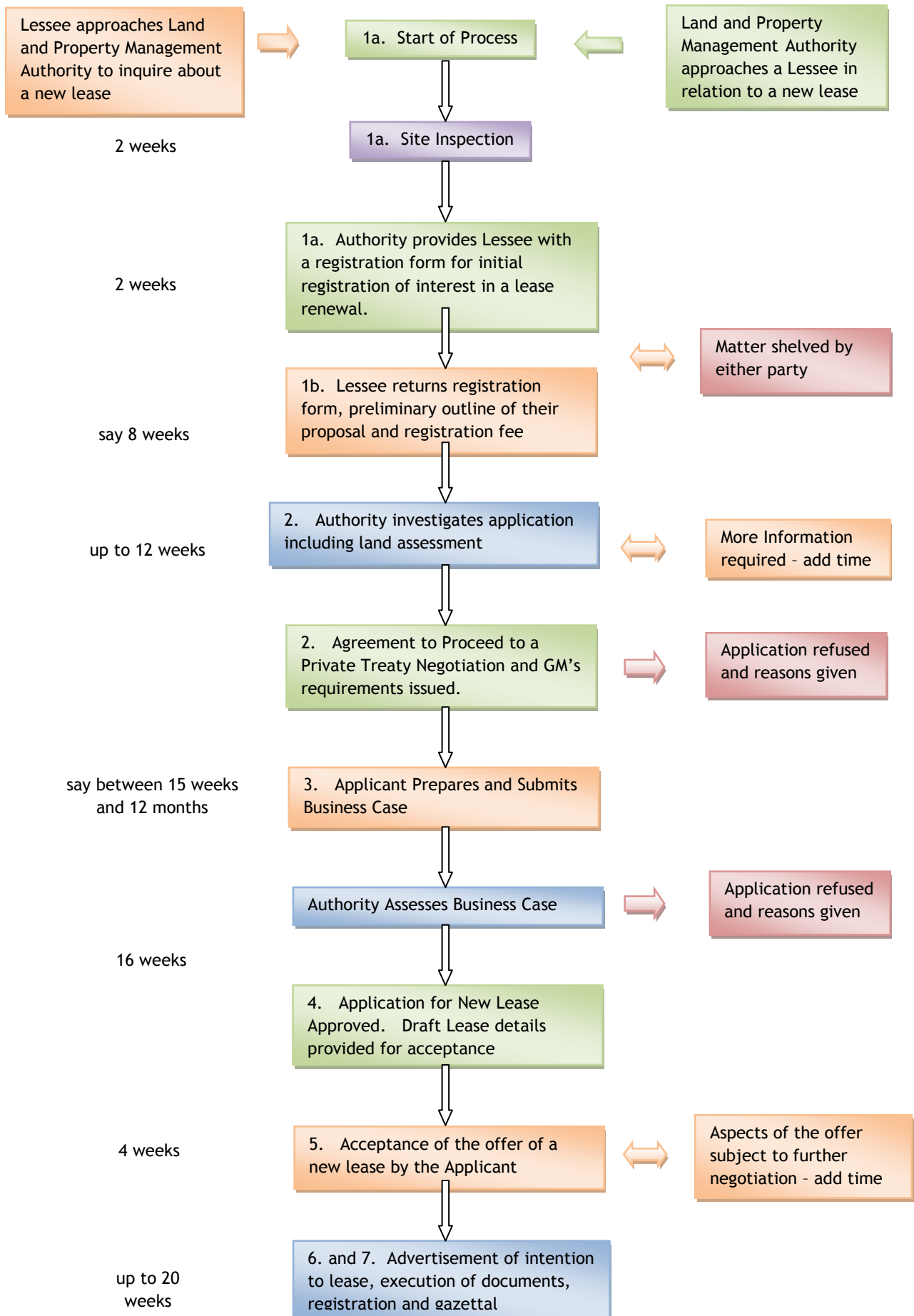
(1) On forfeiture, surrender or other determination of a holding all improvements on the land become, subject to this section and any provision or condition of the holding, the property of the Crown and no compensation is payable for those improvements.

(2) On application made within 1 month of the forfeiture, surrender or determination the Minister may permit the former holder to remove from the land any improvements effected or owned by the holder or the holder’s predecessors in title.

(3) On removal of improvements under this section the Crown ceases to have (and shall be taken never to have had) any right to the improvements.

Before a new lease can be issued the existing tenure must be terminated. This means the existing improvements become an integral part of the premises covered by the new lease and their value is assessed as part of the rental determination. In the case of caravan parks relocatable structures such as cabins installed pursuant to the provisions of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 are the property of the lessee and are not considered to be fixed improvements.

Figure 1: Lease Negotiation Process and Indicative Timeframes



4 FREQUENTLY ASKED QUESTIONS

The following provides responses to some of the key matters often raised by existing lessees or by individuals or companies considering the purchase of an interest in an existing Crown lease for a caravan park.

4.1 What may be considered in assessing whether a lessee is a “good and complying tenant”?

The existing Policy already states in Clause 6.1 that subject to a Review of a number of reasonable strategic and business issues existing lessees will be offered a new commercially based tenure. One of those issues relates to the past performance of the lessee and the matters the Authority may consider include;

- *Payment of rent - in full and in a timely manner;*
- *Compliance with lease conditions;*
- *Compliance with any conditions of the S 68 approval to operate the caravan park;*
- *That the tenant has adequately maintained and improved the Crown’s improvements;*
- *That the existing development complies with the requirements of other relevant legislation and all necessary consents and approvals have been obtained; and*
- *That there are no encroachments or other adverse impacts on adjoining Crown land that have been created by the lessee.*

4.2 At what stage should a lessee contact the Authority in relation to the creation of a new lease?

Section 6.1 of the Policy states that a review of all tenures will “generally take place not less than 2 years prior to the expiry date of the lease or on application for a new lease by the existing lessee.” There is no statutory bar to a lessee seeking to negotiate with the lessor at any time, however, common sense would suggest that there would need to be compelling reasons such as a new development program, to approach the Authority any earlier than 10 years prior to the termination date.

4.3 How is the term of a new lease determined?

*The Crown Lands Act 1989 allows for land to be leased for terms of up to 100 years. However, on the basis of a review of existing caravan park leases and other tenures the Authority has determined that the **usual** term for a new lease for a caravan park will be **25 years subject to the submission of a sound Business Case**. There will be circumstances where a longer lease can be justified.*

Matters that are taken into account in for all new leases include;

- *The possibility of the land being required for some other public purpose at an identifiable time in the future;*
- *The impact of State, regional and local planning constraints on the scale and permissibility of any re-development that may be proposed;*
- *The remaining economic life of the existing development and in particular the Crown’s improvements;*
- *The value of any proposed capital improvement program and in particular the impact the program will have on the value of the Crown’s assets(ie fixed improvements, roads, underground services, vegetation, etc);*
- *Consents and approvals required to implement any proposed program; and*
- *Contribution to and responsibility for the improvement and management of adjoining Crown land.*

4.4 Is the value of an improvement program the main factor that will influence the term of a new lease?

A “development program” or “improvement program” of any particular scale is not the primary focus of the Authority’s decision making process. There will be cases where parks are fully and appropriately developed and further development is inappropriate. That does not prevent the creation of a new lease. A new lease may be desirable for other reasons related to management, economic circumstances or simply because the existing lease conditions do not work in a contemporary business environment.

The primary consideration is to formulate a Business Case that is commercially viable, appropriate to the character of the land and provides for ongoing management that addresses the principles of Crown land management.

4.5 A new long term lease including a development program has been agreed. If the lessee then decides to sell the park how will the Crown ensure the development program is completed?

Conditions in relation to development responsibilities will be an integral part of the lease documentation and will be binding on any person or entity that acquires an interest in the lease. Failure to complete an agreed program may prejudice the Minister’s consent to transfer the lease to another party. Another approach is a shorter term lease with option(s) for additional term(s) up to 25 years that are only triggered when development or other obligations are satisfied within a specified time period. Bonding is a mechanism commonly applied to development processes and could also be considered by the Authority in some situations.

The key consideration for the Authority is to facilitate consistent, continuing and appropriate management of the Crown's assets. If early negotiation of a new lease is the correct and appropriate means of addressing the issue in a particular case then approval may be given to proceed. It is noted that Section 139 of the Crown Lands Act 1989 allows a lessee to apply for alteration, modification, addition or revocation of particular lease conditions in certain circumstances.

4.6 What account is taken of the increased costs of security where the lease conditions require that members of the public be allowed to move through the park?

A large proportion of existing caravan parks have always had a requirement to maintain public access through the leased land. Where ownership of these leases has been transferred in the past it is reasonable to assume the sale price reflected the impact of that requirement. Where a requirement is introduced when a new lease is created it is a matter that will be addressed in the Business Case, considered in the valuation process and factored into the proposed rent.

4.7 Does the Land and Property Management Authority have a policy expectation about the park site mix? For example the number of holiday vans/long term casuals, inclusion of campsites, number of cabins, amenities and facilities etc?

As the landowner the Authority does have expectations about the site mix and the standard of development and management of its assets. As a government instrumentality the Authority has a legislative responsibility to manage the Crown estate in the best interests of the people of NSW.

The relevant requirements have been outlined in the Crown Lands Caravan Parks Policy issued in 1990. At the same time the Authority recognises that the business environment is dynamic and there must be room for parks to address changes in marketplace expectations.

Obviously the question of an appropriate site mix and the provision of amenities beyond the statutory requirements of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Ground and Moveable Dwellings) Regulation 2005 will be an issue that is addressed as part of the Business Case. Any specific requirements of the Authority will be included in the GM's requirements.

4.8 Is there compensation (to a lessee) when existing sites are lost due to a requirement to provide public access or to address some other issue as part of the GM's Requirements?

If a new lease is being negotiated and the number of sites is reduced by the Authority for any reason then that is a change that is factored into the Business Case by the lessee. This would normally emerge at an early stage in the negotiation process and the commercial impact would finally be assessed as part of the valuation process and be factored into the determination of the rent.

4.9 Is there any compensation payable to the current lessee if the offer of a new lease involves a reduction in the number of sites as a consequence of the boundaries of the leased land being changed and the area significantly reduced?

When an existing tenure of any description is terminated it is always open to the land or property owner to vary the offer in respect to a new tenure. In normal business transactions it then becomes a matter for the tenant to decide whether or not to take up the offer, to negotiate further or walk away.

APPENDIX 1 Outline of NSW Planning Framework

The planning and authorisation of the development of land in New South Wales is controlled primarily by the provisions of the *Environmental Planning and Assessment Act 1979*. At a local level these provisions are expressed in Local Environmental Plans (LEP's). State Environmental Planning Policies (SEPP's) deal with matters of state and regional significance and usually take precedence over LEP's.

SEPP 21 Caravan Parks is an important enabling planning instrument with respect to the development of caravan parks and operates in conjunction with the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* to provide a relatively stable regulatory base for the industry. In particular the SEPP 21 makes development consent mandatory for all new caravan park proposals regardless of local planning instruments. Consent authorities are also required to have regard to the impact of new long and/or short-term dwelling sites on residential and tourism land uses and operations in their local area.

The requirements of the Local Government Regulation provide the technical design standards for the development, layout and operation of caravan parks. The Regulations also function as the basis for issuing an approval to operate a caravan park, by local councils, under the *Local Government Act 1993*.

Leases that will terminate over the next few years were created, and have existed in an environment, where the provisions of the planning system have evolved to deal with the variety of contemporary issues that are of concern to the government and the community. In many instances LEP's did not apply to the original development of many caravan parks on Crown land. SEPP's in relation to littoral rainforest, wetland, coastal development and major development have been established even more recently and may limit expansion or redevelopment of existing caravan parks.

Other policies in relation to issues such as climate change, sea level rise and carbon emissions will continue to emerge over time. These planning instruments and policies have varying implications for the negotiation of new leases but in the vast majority of cases create a substantially different regulatory framework to the one that existed when the lease in question was created.

It is not unusual for the Authority to be assessing an application in a situation where a lease is subject to some or all of the following;

- The land has been zoned or rezoned and ‘caravan park’ is no longer a permissible land use with the current development continuing to operate by virtue of ‘existing use rights’. This means there are restrictions on the scale of any redevelopment that may be contemplated. In some cases any significant expansion of the existing operation may be unlikely to achieve consent;
- The land includes or adjoins SEPP 14 Wetland or SEPP 26 Littoral Rainforest. This can also restrict the opportunity for further development or suggest a requirement to include particular land management responsibilities in the lease conditions;
- A significant proportion of leased caravan parks on Crown land is located in the coastal zone and is affected by SEPP 71 and SEPP Major Development. This adds a range of planning considerations with respect to any development proposal and in many instances the application may be determined by the Minister for Planning or a Regional Planning Panel rather than the local Council;
- A requirement to consider the possible impact of bushfire and the implications that may have on the development of the leased land. Relevant controls include amendments to the EP&A Act and the Rural Fires Act. The 2006 edition of the Planning for Bushfire Protection Guideline indicates that caravan parks and mobile home (relocatable) estates are considered Special Fire Protection Purposes. If the leased land or adjoining land is mapped as ‘fire prone’ this can limit opportunities in relation to future development; or
- A native title claim.

FOR MORE INFORMATION

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